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In the Supreme Court of the United States

No. 772

OCTOBER TERM, 1962.

HARRY A. BLACHMAN,
As a Taxpayer,
Petitioner,

against

ERIEVIEW CORPORATION,
CITY OF CLEVELAND, OHIO,
HOUSING AND HOME FINANCE AGENCY,
ROBERT C. WEAVER, ADMINISTRATOR,
PUBLIC HOUSING ADMINISTRATION,
ROBERT C. WEAVER, ADMINISTRATOR,
UNITED STATES OF AMERICA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
For the Sixth Circuit.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals, for the Sixth Circuit, entered in the above matter on December 19, 1962.

OPINIONS OF THE COURTS BELOW.

The United States District Court Memorandum Opinions filed May 31, 1962 and June 20, 1962 appear in the appendix to the Brief of Appellant filed in the Sixth Circuit and the Opinion of the United States Court of Appeals, for the Sixth Circuit, filed December 19, 1962 is set forth in the Appendix to this Petition at pages 12-15.

JURISDICTION.

This action originally brought in the United States District Court relied for jurisdiction on *Article III, Section 2 of the United States Constitution*, relating to a "law of the United States" and controversy thereunder "to which the United States is a party." Said law is *42 U. S. C. paragraph 1460 (c)*.

The judgment of the trial court was also invoked under *42 U. S. C. paragraph 1404 (a) and 42 U. S. C. paragraph 1456 (c) (1)*, which authorize the Public Housing Administration and the Housing and Home Finance Agency to *"sue and be sued"* with respect to its functions of slum clearance and extension of federal financial assistance in relation thereto.

The judgment of the Supreme Court of the United States is invoked under *28 U. S. C. paragraph 1254 (1)*.

All questions as to jurisdiction were waived by the several respondents at the time this matter was before the United States Court of Appeals.

QUESTIONS PRESENTED.

1. The question is whether, under *42 U. S. C. 1460 (c)*, the Federal Government may or may not extend financial assistance, with respect to an urban renewal area in downtown Cleveland, when such area is *not predominantly residential in character.*

STATUTES INVOLVED.

The statutory provision involved is *42 United States Code Section 1460 (c), as amended by Section 413 of the Housing Act of 1959* on September 23, 1959, which reads as follows:

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses:

Provided: That if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance for such a project:

Provided, further, That the aggregate amount of capital grants contracted to be made pursuant to this title with respect to such projects after the date of the enactment of the Housing Act of 1959 shall not exceed 20 per centum of the aggregate amount of grants authorized by this title to be contracted for after such date."

STATEMENT OF THE CASE.

The plaintiff, as a taxpayer of the City of Cleveland, under authority of Sections 87 and 90 of the Cleveland City Charter, brought this action in the United States District Court for the Northern District of Ohio, Eastern Division, to restrain "the misapplication of funds of the City" and "abuse of its corporate powers" and "performance of the hereinafter mentioned contracts made in behalf of the City in contravention of law."

The defendants are Erieview Corporation, proposed Developer, the City of Cleveland, the Housing and Home Finance Agency and Public Housing Administration, agencies of the Federal Government, charged with administrating slum clearance and urban renewal projects, and Robert C. Weaver, Administrator of said agencies, and the United States Government.

The City of Cleveland had entered into a written agreement on March 3, 1961 with the Housing and Home Finance Agency, wherein the federal authorities were committed to make a loan to the City of Cleveland in the sum of $33,875,784.00 and to make a capital grant of $9,898,784.00 and to make relocation payments of $805,000.00 for the purpose of enabling the City to purchase lands in downtown Cleveland in an area commonly referred to as "Erieview."

On November 9, 1961 the City entered into a written contract with Erieview Corporation, the proposed developer, for the sale of a part of the land, within said Erieview area, approximating five acres. The City agreed to sell said land to the developer for $2,225,000.00, whereas the acquisition cost of said land exceeded $3,000,000.00, thereby threatening a loss to the City and its taxpayers of over three quarters of a million dollars unless said agreement is cancelled or modified to eliminate such subsidy.

The plaintiff states that the consideration for both of the aforesaid agreements, relating to the same and adjacent lands, consists of mutual promises, partly illegal, in that the Federal Government is specifically forbidden by Public Law 86-372, 86th Congress, S.2654, September 23, 1959, 42 U. S. C. No. 1460(c), Title IV, from giving "financial assistance to any urban renewal area, which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses."

Counsel for the City of Cleveland has indicated in the court below that he is in accord with the statement of facts submitted by the plaintiff insofar as it is limited to the identity of the parties, the March 3, 1961 agreement between the City and the United States providing for the financing of the Erieview I redevelopment project; the fact

that on November 9, 1961 the City entered into a contract with Erieview Corporation to sell a part of the land in Erieview project for redevelopment by the Corporation under City and United States control; and the fact that the area is not predominantly residential, but is zoned for commercial and semi-industrial purposes and contains a relatively small number of residential occupancies.

The petitioner seeks to enjoin the extension of federal financial assistance in said Erieview area, which is admittedly nonresidential. The petitioner asks that the contract of March 3, 1961 be declared illegal and cancelled. The petitioner asks that the contract of November 9, 1961 with Erieview Corporation be cancelled or modified to eliminate the alleged illegal subsidy.

The District Court for the Northern District of Ohio granted a motion to dismiss the plaintiff's amended complaint for failure to state a claim in which relief could be granted. Said motion was filed by the defendant City of Cleveland in which the other defendants joined. The plaintiff appealed.

The case comes to this Court on appeal from the order and judgment of the United States Court of Appeals for the Sixth Circuit which affirmed the judgment of the District Court.

The United States Court of Appeals for the Sixth Circuit further held:

> "Plaintiff's action pursuant to 28 U. S. C. 1653 to amend his complaint to allege the jurisdictional amount more fully is granted. Since under local law he sues in the right of the municipality, the amended allegation of financial loss to it appears to be sufficient. It may also be assumed that the plaintiff presents a case or controversy suitable for determination in federal Court." (*See Petition, Appendix, page 12.*)

REASONS FOR GRANTING THE WRIT.

The federal statute, *42 U. S. C. No. 1460 (c)*, as set forth in this petition, authorizes federal agencies to allocate funds for urban renewal projects *only* in areas which are *predominantly residential in character.*

Said statute *forbids* such financial assistance in an urban renewal area which is *"not predominantly residential."*

The statute reads:

> "Financial assistance shall *not* be extended * * * with respect to any *urban renewal area* which is *not predominantly residential in character* * * *."

The lower courts' decisions have, in effect, eradicated the fourth word of the above sentence, the word *"not."* The government agencies, which have flaunted the directive of the Congress of the United States, would have one believe that the statute reads: *"Financial assistance* **shall** *be extended with respect to any urban renewal area which* **is not predominantly residential in character.**"

The purpose of Congress was just the opposite. The act of Congress was just the opposite.

The 1949 Housing Act, Public Law 171 of the 81st Congress, S. 1070, was entitled:

> *"An Act*—To establish a national housing objective and the policy to be followed in the attainment thereof, to provide federal aid to assist slum clearance projects and low-rent public housing projects initiated by local agencies, to provide for financial assistance by the Secretary of Agriculture for farm housing, and for other purposes."

The *purpose of the Housing Act of 1949* is set forth in part as follows:

> *Sec. 2.* "The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require hous-

> ing production and related community development sufficient to remedy the serious housing shortage, the elimination of sub-standard and other inadequate housing through the clearance of slums and blighted areas and the realization as soon as feasible of the goal of a decent home and suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth and security of the Nation."

Not only does the federal statute require (1) that the subject area be *predominantly residential*, but also (2) that *such an area* must be *redeveloped* for *predominantly residential uses*, except under certain conditions which are set forth in the Proviso clause which follows the first part of the statute.

The Proviso permits *nonresidential redevelopment* in *predominantly residential areas*, if the governing body (the City Council here) determines that it is desirable to *redevelop nonresidentially*.

For example,—the "Gladstone" area is a predominantly residential and blighted area located two miles from downtown Cleveland. Were it not for this Proviso, it would be necessary to *redevelop* the Gladstone area for *predominantly residential uses*. Presently nonresidential redevelopment is being planned and approved for the Gladstone area and such nonresidential *redevelopment* is proper and not subject to challenge, because of the Proviso. That is all that the Proviso authorizes. The Proviso cannot change the character of the subject area in the first part of the statute, which is a *predominantly residential area*.

When the District Judge overruled the plaintiff's application for a rehearing, he said (p. 17a of Pltf's Appendix):

"As stated in the original memorandum, the plaintiff relied upon part of the statute which provided for the redevelopment of residential areas and neglected to properly recognize the legal effect of the additional provision, which is as follows: Provided, That if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the administrator may extend financial assistance under this title for such project * * *."

In conceding that the first part of the statute describes a *residential area,* the District Judge unwittingly had the complete answer to the issue in this case. He then leaped over his own finding and came to an opposite conclusion.

In oral argument before the United States Court of Appeals Mr. O'Loughlin, Assistant Law Director for the City of Cleveland, said and we quote: "If there were a period at the end of the first part of the statute, Mr. Blachman would be right."

If the subject area is a *predominantly residential area* in the forepart of the statute, then the subject area cannot change and become a nonresidential area. It cannot be both. Therefore, "*such an area*" in the Proviso clause can only mean the predominantly *residential area* which alone can qualify for federal financial assistance pursuant to the statute.

This is a Housing Law. Its intention was always to secure "a decent home and suitable living environment for every American family." A new intention cannot be read into the amended law by any careless comment which departs from the clear expression of the law as enacted.

See 50 *Ohio Jurisprudence* 2d No. 171, pages 142, 143 on the subject of *Unexpressed Intention*:

> "In the construction of statutes it is the expressed legislative intent that is of importance. The law does not concern itself with the legislature's unexpressed intention, and no supposed intent of that body, aliunde the statute, can supplant the words used. The question is not what the general assembly intended to enact, but the meaning of that which it did enact. * * *"

The respondents' contention would nullify the clear purport of the statute, which allocates funds for *predominantly residential urban renewal areas. There is no other statute for such authority.*

It is unthinkable that the clear and unambiguous language of this statute could be translated into such a destructive result.

See *Lane v. U. S.* (C. C. A. 6th), 17 Fed. 2d, 923:

> "Strict construction does not mean that the statute should be so construed in a spirit of hostility or so construed as to render it practically inoperative and ineffectual, so as to defeat the obvious purpose of the legislature."

Both parts of the statute are operative by following your petitioner's interpretation. Nonresidential redevelopment is authorized in certain cases as pointed out, without invalidating the prime purpose of this statute.

The Area Redevelopment Act has no application in the Erieview area, since it provides a fund of about $300 million, to be used from 1961 through 1965, when and where the Secretary of Commerce finds that more than 6% unemployment persists, in which event the area seeking to qualify for federal financial assistance may be residential or nonresidential.

The language of the Area Redevelopment Act *recognizes* that *42 U. S. C. No. 1460(c)* requires that the subject area seeking to qualify for federal financial assistance must be one predominantly residential or an area to be redeveloped for predominantly residential uses. The language of said Act pertinent thereto reads as follows:

> "Subject to the provisions of subsection "e" of this section, the Administrator may provide such financial assistance under this section without regard to the requirement or limitations of section 110(c) [*which is 42 U. S. C. 1460(c)*] that the project area be predominantly residential in character or be redeveloped for predominantly residential uses under the urban renewal plan, and without regard to any of the limitations of that section on the undertaking of projects for predominantly nonresidential uses * * *." Public Law 87-27, 87th Congress, S. 1, *May 1, 1961*, Section 14, New Section 113(b).

Furthermore, the *Urban Renewal Manual of the Housing And Home Finance Agency* interpreted the above provision under date of *5/24/62* under the heading of *3-2 Project Eligibility of Categories of Project Eligibility*, as follows:

> "F. Area Redevelopment Exception Project
>
> An area redevelopment exception project is excepted from the requirement of Section 110(c) of Title I that the project area must be predominantly residential in character or must be redeveloped for predominantly residential uses."

CONCLUSION.

We have the most unusual, certain and positive act of the Congress itself, when it wrote into another section of the Code in the Area Redevelopment Act of 1961 the positive words:

> **"* * * without regard to the requirement of section 110(c) [which is 42 U. S. C. 1460(c)] that the project area be predominantly residential in character or be redeveloped for predominantly residential uses under the urban renewal plan and without regard to any of the limitations of that section on the undertaking of projects for predominantly nonresidential uses * * *."**

When the Congress has so clearly set forth in the Area Redevelopment Act of 1961 the exact meaning of 42 U. S. C. 1460(c), how can the clear and unambiguous language of the Congress be misunderstood or misinterpreted?

No comments or declarations as to the meaning of 42 U. S. C. 1460 (c) can have more finality than the declaration of the Congress itself on May 1, 1961 in the Area Redevelopment Act.

For the foregoing reasons this petition for a writ of certiorari should be granted, so that the disposition of hundreds of millions of dollars of urban renewal funds shall not be in jeopardy.

Respectfully submitted,

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APPENDIX.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Decided December 19, 1962.

Before: O'SULLIVAN and SMITH (U. S. Circuit Judge, Second Circuit, sitting by designation) and BOYD, District Judge.

SMITH, Circuit Judge. The City of Cleveland is proceeding with federal assistance to redevelop through its "Erieview" project a commercial area for commercial uses. The Cleveland City Charter permits a taxpayer to institute proceedings to restrain "the misapplication of funds of the City, or abuse of its corporate powers, or execution or performance of any contract made in behalf of the City in contravention of law" after demand to institute such a suit has been made on the City Director of Law and he has refused. See Cleveland City Charter, Sections 87, 90. Plaintiff-appellant, as a taxpayer, brings such an action in federal court, alleging that the City has entered into an illegal contract with the United States for loan to the City of funds for urban renewal unauthorized by statute and a second illegal contract with the Erieview Corporation for sale to it of lands for redevelopment under the first contract. Federal question jurisdiction is claimed to exist under 28 U. S. C. 1331. Plaintiff's motion pursuant to 28 U. S. C. 1653 to amend his complaint to allege the jurisdictional amount more fully is granted. Since under local law he sues in the right of the municipality, the amended allegation of financial loss to it appears to be sufficient. It may also be assumed that plaintiff presents a case or controversy suitable for determination in federal court. *Cf. Everson v. Board of Education*, 330 U. S. 1 (1947); *Doremus v. Board of Education*, 330 U. S. 429, 343-35 (1952).

The land which the Erieview Corporation is to redevelop is part of a Cleveland project known as "Erieview" which is aimed at redeveloping a predominantly commercial area for commercial uses. This is the same project unsuccessfully attacked in *Grisanti v. City of Cleveland*, 179 N. E. 2d 798 (Ohio C. P. 1961), *aff'd* 181 N. E. 2d 299 (Ohio Ct. App. 1962), *appeal dismissed*, 173 Ohio State 386, 182 N. E. 2d 568 (1962), *appeal dismissed for want of a substantial federal question*, 31 U. S. L. W. 3154 (U. S. Sup. Ct. November 6, 1962). The statute which the apellant here claims to have been violated by the federal grant of funds is 73 Stat. 675 (1959), as amended, 42 U. S. C. 1460 (c) which provides as here relevant:

> "Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: *Provided*, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this subchapter for such a project: *Provided further*, That the aggregate amount of capital grants contracted to be made pursuant to this subchapter with respect to such projects after September 23, 1959, shall not exceed 20 per centum of the aggregate amount of grants authorized by this subchapter to be contracted for after such date."

The District Court for the Northern District of Ohio, Ben C. Green, J., granted a motion to dismiss the complaint for failure to state a claim on which relief could be granted filed by the defendant City of Cleveland in which the other defendants joined, and plaintiff appeals. The

Court did not pass on other questions of jurisdiction and governmental immunity in view of the dismissal. We affirm the judgment dismissing the action.

The District Court concluded from a reading of the statute and the relevant legislative history that a contract such as the one between the City and the United States was authorized by the statute, and that the plaintiff had therefore made no showing of illegality. This contract being proper, the subsidiary contract between the City and Ericview Corporation was also found to be legal.

Appellant's efforts to reword the statute so as to prohibit the contracts in suit are unavailing. The meaning of the statute is quite plain as it is written, even without the strong reinforcement found in the legislative history referred to in Judge Green's memorandum below. The provision in terms authorizes redevelopment of "such an area." This plainly refers to "any urban renewal area which is not predominantly residential * * * and which * * * is not to be redeveloped for predominantly residential uses * * *." Appellant argues that the statute should be restated in positive terms by eliminating the "nots." This may be an interesting exercise in semantics, but quite plainly alters the meaning of the language as used, which is that a limited portion (at that time 20%) of the funds only was to be available for redevelopment of areas neither predominantly residential in origin nor in ultimate use. No claim has been advanced that the requisite determination has not been made by the governing body of the local public agency or that the aggregate amount of capital grants contracted to be made under the proviso in question exceeds 20 per centum of the aggregate amount under the subchapter. Appellant's contentions on interpretation of the statutory provisions border on the frivolous.

Judgment affirmed."

JUDGMENT.

(Filed December 19, 1962.)

Appeal from the United States District Court for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Ohio, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

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Respondents.

BRIEF OF CITY OF CLEVELAND AND ERIEVIEW CORPORATION

In Opposition to Petition for Writ of Certiorari.

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BRIEF OF CITY OF CLEVELAND AND ERIEVIEW CORPORATION

In Opposition to Petition for Writ of Certiorari.

I.

OPINIONS.

The opinion of the District Court for the Northern District of Ohio dismissing petitioner's complaint is reprinted as an appendix to this brief.

The opinion of the Court of Appeals for the 6th Circuit affirming the judgment of the District Court is also reprinted as an appendix to this brief.

II.

PRELIMINARY STATEMENT.

This action was filed by a taxpayer of the City of Cleveland, Ohio, seeking to void an agreement between the respondents, City of Cleveland and the United States of America, whereby the two governmental units united in a joint effort to eliminate a blighted area of the City of Cleveland by means of an urban renewal project denominated as "Erieview I, Urban Project No. Ohio R-36."

As a corollary complaint the petitioning taxpayer also sought to annul an agreement between the City of Cleveland and the respondent Erieview Corporation, whereby the Corporation contracted with the City to develop a portion of the Erieview project according to plans and standards approved by both the United States of America and the City of Cleveland.

The Housing and Home Finance Agency and the Public Housing Administration, as the authorized federal administrative agencies together with Robert C. Weaver, their administrator, are also respondents herein.

For purposes of this brief the taxpayer will be referred to as "petitioner," the City of Cleveland as "City" and the United States of America as "United States." All emphasis is that of the writer unless otherwise indicated.

III.

QUESTION PRESENTED.

The only question of law raised by this petition is:

Under the Housing Act of 1949, as amended by the 86th Congress on September 23, 1959, is the federal government authorized to lend financial assistance to a local government for an urban renewal project if the area to be redeveloped is not predominantly residential in character and if such area is to be redeveloped for predominantly nonresidential uses?

IV.

STATEMENT OF THE CASE.

Petitioner questions the right of the City to receive federal assistance to redevelop through its "Erieview" project a decaying downtown commercial area if the redeveloped area is to continue as commercial in character. The fact that practically every large city in the country—New York, Boston, Pittsburgh, Detroit, Youngstown, Toledo, Akron, Minneapolis, St. Paul and Grand Rapids to name but a few—has obtained federal assistance for a similar project does not seem to dampen his ardor.

To effectuate his purpose, petitioner seeks to set aside a loan and capital grant contract between the City and the United States executed on March 3, 1961, which makes possible the elimination of a blighted area of the City with the aid of federal financial assistance. The area to be redeveloped is in the old central core of the City and is zoned for commercial and semi-industrial purposes. It contains a relatively small number of residential occupancies.

Petitioner also attacks the validity of an implementing agreement between the City and Erieview Corporation, whereby the City is to sell a part of the land area encompassed within the Erieview renewal project to the Corporation for redevelopment by the Corporation under City and United States control.

This is the same urban renewal project which was unsuccessfully attacked in *Grisanti vs. City of Cleveland*, 179 N. E. (2) 798 (Ohio C. P. 1961), affirmed 181 N. E. (2) 299 (Ohio Ct. App. 1962), appeal dismissed, 173 O. S. 386, 182 N. E. (2) 586 (1962), appeal dismissed for want of a substantial federal question, 31 USLW 3154 (U. S. Sup. Ct. Nov. 6, 1962).

With the consent of the City this same petitioner was permitted to intervene in the *Grisanti* case as an amicus

curiae. He filed a total of seven briefs in the various courts and in both the Ohio Appellate Court and the Ohio Supreme Court argued the very question which he urges in the instant litigation.

The District Court for the Northern District of Ohio granted a motion of the City in which all respondents joined to dismiss the complaint for failure to state a claim upon which relief could be granted. The judgment of the District Court was affirmed by the United States Court of Appeals for the Sixth Circuit.

V.

ARGUMENT.

REASONS WHY THE WRIT SHOULD BE DENIED.

In order to effectuate his complaint the petitioner has constructed a "straw man" whose very existence evaporates with an analysis of the language incorporated into 42 U. S. C. A. 1460 (c) by the amendment enacted as Section 413 of the Housing Act of 1959. The wording of this amendment is clear, concise and unambiguous. There is absolutely no legal substance to support the petitioner's isolated exercise in semantics.

Nor can petitioner gain any solace from a study of the legislative history of the Housing Act of 1949 as amended to date. For his own purposes, he has remained completely oblivious of the various legislative reports which demonstrate congressional policy and intent with reference to financial assistance to urban renewal areas that are predominantly non-residential in character both before and after redevelopment.

Regardless of merit, however, the very existence of the instant petition is costing the city almost fifty thousand dollars a month in excess interest rates due to its inability to refinance existing loans at a lower rate during

the pendency of this litigation. Such loss is in addition to a diminution in tax revenue because the City is unable to convey clear title to the six million dollars worth of real property appropriated for use in the Erieview urban renewal project due to the cloud generated by this law suit.

1. By Its Express Terms the Housing Act as Amended in 1959 Authorizes the Redevelopment of Nonresidential Areas for Nonresidential Purposes.

The gravamen of petitioner's argument revolves around *his* interpretation of Section 413 of the Housing Act as amended in 1959 which is codified as 42 U. S. C. A. Section 1460 (c). The relevant content of said section reads:

> "Financial assistance shall not be extended under this title with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: *Provided*: *That if the governing body of the local public agency determines that the redevlopment of such an area for predominantly nonresidential uses is necessary for the proper development of the Community, the Administrator may extend financial assistance for such a project*: Provided further, That the aggregate amount of capital grants contracted to be made pursuant to this title with respect to such projects after the date of the enactment of the Housing Act of 1959 shall not exceed 20 per centum of the aggregate amount of grants authorized by this title to be contracted for after such date."

The purpose of the 1959 amendment insofar as it affects the pertinent provision of Section 1460 (c) was to liberalize federal financial assistance in redeveloping areas which were initially nonresidential in character and which were to be redeveloped for predominantly nonresidential uses.

Prior to 1959, federal financial assistance in redeveloping a nonresidential area was contingent upon the area containing a substantial number of slum, blighted, deteriorated or deteriorating dwellings, the elimination of which would promote the public health, safety and welfare. However, in 1959, the Congress made aid requirements less restrictive by providing that a predominantly nonresidential area could be redeveloped for nonresidential purposes if the local governing body determined that such an improvement was necessary for the proper development of the community. In enacting the 1959 amendment to the Housing Act, Congress eliminated the former requirement that a nonresidential area contain a substantial number of blighted and deteriorated dwellings before it could qualify for nonresidential development under the urban renewal laws. At the same time Congress increased the aggregate amount of capital grant available for nonresidential development.

Standing alone the first clause of the relevant 1959 amendment to the Housing Act, as quoted above, indicates that federal financial assistance shall not be extended for the redevelopment of any area which is not predominantly residential in character unless such area is to be redeveloped for predominantly residential uses. *However, this language is immediately qualified by the first proviso which establishes a procedure whereby a predominantly nonresidential area may be redeveloped for a predominantly nonresidential use provided that the local Council or other governing body determines the necessity for such development.* Petitioner makes no contention that the required determination of Council was not made in the present case.

The fact that petitioner has misconstrued the effect of the 1959 amendments to the Housing Act is very obvious

from the arguments found in his brief. He contends that the language of the Proviso relating to "such an area" refers to an area "predominantly residential in character." His position is set forth at page (7) of his petition as follows:

> "Not only does the federal statute require (1) that the subject area be *predominantly residential*, but also (2) that *such an area* must be *redeveloped for predominantly residential uses*; except under conditions which are set forth in the Proviso clause which follows the first part of the statute.
>
> "The Proviso permits *nonresidential development* in *predominantly residential areas*, if the governing body (the City Council here) determines that it is desirable to *redevelop nonresidentially*."

The fallacy of petitioner's contention is readily obvious when one reads the complete text of the statute. The language in the Proviso "such an area" refers back for its association to the previous clause of limitation. In such clause the subject matter is "any urban renewal area which is not predominantly residential in character." Applying this language to the term "such an area" in the Proviso, it reads as follows:

> "Provided: That if the governing body of the local public agency determines that the redevelopment of *any urban renewal area which is not predominantly residential in character* for predominantly nonresidential uses is necessary for the proper development of the community, the administrator may extend financial assistance for such a project."

To our knowledge there is no case law interpreting the language in question and this is easily understandable because an analysis of the wording used in the statute must lead to the conclusion that the Congress in a clear

and unambiguous manner authorized the expenditure of urban renewal funds to redevelop non-residential areas for non-residential purposes. This conclusion is readily supported by the opinions rendered below in both the District and Circuit Courts.

The District Court expressed itself on the question as follows:

> "It is the opinion of the court that the statutory provisions relied on by plaintiff, contrary to his contentions, do provide for financial assistance by the federal government for the redevelopment of downtown nonresidential areas, such as Erieview. *The plaintiff has recited only a part of a statutory provision out of the context of the whole, which leads to mis-interpretation of the act.* The plaintiff is not sustained in his contention that the City of Cleveland, by entering into agreements for financial assistance with reference to Erieview with the Public Housing Administration, has created an illegal debt."

The Circuit Court expressed itself even more forcibly in the opinion of Judge Smith who stated as follows:

> "Appellant's efforts to reword the statute so as to prohibit the contracts in suit are unavailing. The meaning of the statute is quite plain as it is written, even without the strong reinforcement found in the legislative history referred to in Judge Green's memorandum below. The provision in terms authorizes redevelopment of 'such an area.' This plainly refers to 'any urban renewal area which is not predominantly residential * * * and which * * * is not to be redeveloped for predominantly residential uses * * *.' Appellant argues that the statute should be restated in positive terms by eliminating the 'nots.' This may be an interesting exercise in semantics but quite plainly alters the meaning of the language as used, which is that a limited portion (at the time 20%) of the funds only was to be available for redevelopment

of areas neither predominantly residential in origin nor in ultimate use. No claim has been advanced that the requiste determination has not been made by the governing body of the local public agency or that the aggregate amount of capital grants contracted to be made under the proviso in question exceeds 20 per centum of the aggregate amount under the subchapter. *Appellant's contentions on interpretation of the statutory provisions border on the frivolous.*"

2. The Legislative History of the Housing Act of 1949 as Amended Evidences the Clear Intent of Congress to Authorize Federal Financial Assistance in Alleviating Both Residential and Nonresidential Blight Within the Frame Work of Its Urban Renewal Program.

We will not attempt in this brief to duplicate in detail the District Court's excellent analysis of the legislative history of the Housing Act since its inception in 1949. However, we believe it is important to emphasize that even though the initial authorization in the Housing Act made no provision for nonresidential development, subsequent amendments in the years of 1954, 1955, 1956, 1959 and 1961 completely rectified this Congressional omission.

As noted by the District Court the present attitude of Congress is readily apparent from a study of the committee report on the Area Redevelopment Act. The report makes reference to the scope of the urban renewal program as then in operation under the 1959 amendments to the Housing Act and is set forth in the 1961 U. S. Code Congressional and Administrative News, page 1581, stating in part:

"While the primary purpose of the urban renewal program is the elimination of residential slums, there is a growing recognition of the importance of nonresidential slum clearance projects. Sound city planning

> often requires that rundown business districts be rehabilitated or cleared and redeveloped, if the city is to fulfill its proper functions. Such redevelopment provides new opportunities for employment and business expansion. Moreover, experience has shown that public revenues can be increased manyfold by eliminating blight and returning land to its highest and best use. By so increasing tax revenues, such projects enable the local government to meet its many other responsibilities toward its citizens."

Interestingly enough, petitioner at pages 9 and 10 of his petition makes the claim that the language contained in Section 113(b) of the Area Redevelopment Act gives credulity to his interpretation of the meaning of Section 1460(c) of the Housing Act as amended in 1959. Such a contention is figuratively annihilated by a study of the House committee report which sets forth a section by section summary of the Area Redevelopment Act. The committee report as it refers to the sections of the Area Redevelopment Act cited by petitioner at pages 10 and 11 of his petition is found in 1961 U. S. Code Congressional and Administrative News page 1603 and reads:

> "This section amended title I of the Housing Act of 1949 by adding at the end thereof a new section 113 which would permit the use of the slum clearance and urban redevelopment provisions of that title (without regard to certain limitations which would otherwise be applicable) to assist in the establishment or improvement of industrial plants and facilities in areas designated as redevelopment areas under section 5 of the bill. * * *
>
> "Sub-section (b) of the new section 113 would provide that financial assistance could be furnished under title I in areas so certified without regard to the existing requirement that the project area be predominantly residential in character and that it be

redevelopment for predominantly residential uses subject only to the limitation contained in sub-section (e). * * *

"Sub-section (e) of the new section 113 would limit the amount available for assistance as provided in that section to 10 per cent of the funds authorized after the date of enactment of the bill for capital grants under section 103 of title I. However, this amount would be in addition to the amount available under the present exemptions from predominantly residential requirements provided by the next to last paragraph of Section 110(c) of title I, so that projects receiving assistance under the new section 113 would not be competing with projects seeking assistance under the present exemptions (*which permit assistance without regard to the predominantly residential requirements only up to 20 per cent of the total amount of capital grants authorized under such title after September 23, 1959*)."

For additional emphasis, we direct the Court's attention to the legislative history of both the 1959 and 1961 amendments to the Housing Act as they relate to the pertinent provisions of 42 U. S. C. A. Section 1460(c). The history of the 1959 amendment is found in the 1959 U. S. Code Congressional and Administrative News page 2864 and reads:

"Nonresidential Developments (Section 413). Amends Section 110(c) of the Housing Act of 1949 to permit up to 20 per cent of the future capital grant authorization to be used for areas *which are not predominantly residential and which are not to be redeveloped for predominantly residential uses*, even if such areas do not include a substantial number of slum dwellings as presently required."

In 1961, Section 1460(c) was again amended to increase the limitation on nonresidential development from

20 per cent to 30 per cent of the available capital grant funds. The committee commentary on this last amendment is of particular significance since the 1961 amendment, except as to the per centum just noted, made no substantial change in the provisions of Section 1460(c) as effective in 1959. The committee report as set forth in 1961 U. S. Code Congressional and Administrative News page 1952, states:

"Section 309 would permit 30 per cent instead of 20 per cent of urban renewal grant authority to be used for the renewal of areas not fulfilling the predominantly residential requirement of the law.

"*Urban renewal project areas presently are required to be predominantly residential in character either before or after renewal, except 20 percent of available urban renewal grant funds may be devoted to projects without regard to this requirement.* In addition, exceptions to the requirement are provided for disaster areas and for certain projects in the vicinity of colleges or universities. Another exception is to be found in the recently enacted Area Redevelopment Act (Public Law 87-27), to stimulate industrial and commercial development in depressed areas.

"Originally, the Housing Act of 1949 made no provision for such exceptions, as urban renewal was regarded almost solely as a tool for the removal of slums and the provision of good residential neighborhoods. Over the years, however, it became clear that the construction of good neighborhoods was intimately tied to the economic health of the community. The revitalization of industrial, commercial and downtown areas so as to attract job-creating and private investment was realized as a necessary goal to which urban renewal could make a substantial contribution. Consequently, a 10 per cent exception to the 'predominantly residential' requirement was put into the

Housing Act of 1954, and this was raised to 20 per cent in the Housing Act of 1959. Under existing law this amounts to $313.6 million. Practically all of this has been committed at this time.

"With growing attention to the needs for downtown renewal, it appears necessary to increase the exception to provide for a greater number of projects of this type. The economic, institutional and cultural basis of community life are increasingly recognized as necessary to the creation and continuing existence of good homes and sound urban neighborhoods."

We can add nothing to the legislative history pertinent to the 1959 Housing Act. Such history completely dispels all arguments of interpretation proffered by the petitioner.

VI.

CONCLUSION.

We respectfully submit that certiorari should be denied for the reason that no legitimate issue of statutory construction has been presented for the Court's consideration.

Respectfully submitted,

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APPENDIX A.

Opinion of the United States District Court on Motion to Dismiss Plaintiff's Complaint.

GREEN, *J.*:

Plaintiff, as a taxpayer of the City of Cleveland, Ohio, filed his complaint in the United States District Court for the purpose of enjoining further proceedings in the Erieview project in the City of Cleveland (a downtown urban renewal project known as Erieview I Urban Project No. Ohio R. 36) and for an order cancelling agreements entered into between the City of Cleveland and the United States of America, wherein the federal government committed itself to lend to the City of Cleveland funds for the development of Erieview and to cancel the agreement between the City of Cleveland and Erieview Corporation covering the redevelopment of lands in the Erieview area.

Plaintiff's amended complaint alleges that he is a taxpayer of the City of Cleveland, Ohio, and brings this action on behalf of himself and all of the taxpayers of Cleveland. Jurisdiction is predicated on 42 U. S. C. § 1404(a) and Article III, § 2 of the United States Constitution.

The defendants are the Erieview Corporation, the City of Cleveland, the Housing and Home Finance Agency and Public Housing Administration, agencies of the United States, and Robert C. Weaver, the director thereof.

Plaintiff alleges that City of Cleveland and the United States of America entered into an agreement on March 3, 1961, wherein the federal authorities are committed to lend to the City $33,875,784 and to make a capital grant of approximately $10,000,000. These funds are intended for use in a downtown redevelopment project commonly known as Erieview.

Plaintiff further alleges that the City of Cleveland has agreed to sell to the Erieview Corporation a substantial

part of land within Erieview, for redevelopment by the private corporation according to plans and standards agreeable to, and agreed upon by, the United States of America and the City of Cleveland.

Plaintiff alleges in his complaint that the agreements entered into by the City of Cleveland with the United States and the Erieview Corporation are illegal and contrary to the laws of the United States in that the Erieview area is not a blighted predominantly residential area, but in fact is a commercial or industrial area, and that the federal government is forbidden by law from giving financial assistance to such an area.

Plaintiff stated in his complaint that:

> The consideration for both of the aforesaid agreements, relating to the same and adjacent lands, consist of mutual promises partly illegal, in that the federal government is forbidden by Public Law 86-372, 86th Congress, S. 2654, September 23, 1959, 42 U. S. C. § 1460, Title IV, from giving: Financial assistance to any urban renewal area, which is not predominantly residential in character and which, under urban renewal plan therefor, is not to be redeveloped for predominantly residential uses.

Based thereon plaintiff seeks an order that the agreements be declared null and void and that the defendants, generally, be enjoined from any further proceedings related to the Erieview program.

Plaintiff bases his complaint on the fact that he is a taxpayer and will suffer irreparable loss for which he has no adequate remedy at law.

Defendant City of Cleveland initially filed a motion to dismiss the complaint. Thereafter, the Erieview Corporation and the government agencies, being the remaining parties defendant, joined in that motion. This matter is

taken under consideration by the Court on the motions to dismiss, the briefs of the defendant City of Cleveland and plaintiff's briefs opposing the motion to dismiss.

The City of Cleveland in its motion to dismiss alleges

1. The plaintiff lacks standing to invoke the jurisdiction of this court because the complaint does not disclose that he will suffer injury to any legal right.
2. The court lacks jurisdiction because the amount actually in controversy is less than $10,000, exclusive of interest and taxes.
3. The court lacks jurisdiction because there is no diversity of citizenship between the parties.
4. The complaint fails to state a claim upon which injunctive relief can be granted.

The Court will take under consideration in this memorandum the fourth item that "the complaint fails to state a claim upon which injunctive relief can be granted." The City contends that there is no federal question of law involved because the averments in the complaint do not disclose facts upon which the plaintiff would be entitled to relief under any federal statute.

Plaintiff's lawsuit is based on the allegations that the federal government is forbidden to loan funds for redevelopment of areas "not predominantly residential in character" which are "not to be redeveloped for predominantly residential uses," and cites for his authority Public Law 86-372, 86th Congress S. 2654, Sept. 23, 1959, 42 U. S. C. § 1460, Title IV, and he relies on the first portion of this section of the act which reads:

> Financial assistance shall not be extended to any urban renewal area, which is not predominantly residential in character and which, under the renewal plan therefor, is not to be redeveloped for predominantly residential uses; * * *

Plaintiff failed to take into consideration other sections and amendments of the act which provide for exceptions to the rule. If there had been no exceptions and amendments to the act, plaintiff would be correct in his contention, because when the Housing Act was first written in 1949 there was no provision for allocation of funds for redevelopment of nonresidential areas.

The act has been amended on several occasions by Congress and § 413 of the Housing Act of 1959 has the following exception which appears immediately after the law quoted above and relied on by the plaintiff.

> *Provided, That if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the administrator may extend financial assistance under this title for such project.* * * * (Emphasis added.)

A review of the legislative history of the act will be helpful in determining the issue before the Court and demonstrates Congressional policy and intent with reference to financial assistance to downtown urban areas which are predominantly nonresidential.

42 U. S. C. § 1460 had its birth in the Housing Act of 1949, 42 U. S. C. 1450 et seq. The 1949 act made no provision for allocation of federal funds for redevelopment of nonresidential areas.

In 1954 the Housing Act was amended, August 2, 1954, C. 649, Title III § 311, 68 Stat. 626, and the following provision inserted:

> * * * and provided further, that financial assistance shall not be extended under this title for any project involving slum clearance and redevelopment of an area which is not clearly predominantly residential in character unless such an area is to be redeveloped for

predominantly residential uses, except that, where such an area contains a substantial number of slum, blighted, deteriorated or deteriorating dwellings or other living accommodations, the elimination of which would tend to promote the public health, safety and welfare in the locality involved and such area is not appropriate for redevelopment for predominantly residential uses, the Administrator may extend financial assistance for such a project, but the aggregate of the capital grants made pursuant to this title with respect to such projects shall not exceed 10 per centum of the total amount of capital grants authorized by this title.

This amendment was embodied in 42 U. S. C. 1460. The committee reports on this amendment are found at 1954 U. S. Code Cong. & Adm. News, page 2757 et seq. With this amendment Congress took the first step toward extending the limits of urban redevelopment.

In 1955, 42 U. S. C. § 1460 was once again amended. A further proviso was added, reading:

Where land within the purview of subparagraph (1) (ii) or (1) (iii) hereof (whether it be predominantly residential or nonresidential in character) is to be redeveloped for predominantly nonresidential uses, loans and advances under this title may be extended therefor if the governing body of the local public agency determines that such redevelopment for predominantly nonresidential uses is necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives and to afford maximum opportunity for the redevelopment of the project area by private enterprise * * * Aug. 11, 1955, C. 783, Title I, § 106(c), 69 Stat. 637.

The House report on this bill (H. R. 913) stated:

Subsection (c) would add a provision to section 110 (c) of the Housing Act of 1949 which would authorize

loans and advances to be made under the slum clearance and urban renewal program to assist in the redevelopment of either predominantly open land or open land for industrial or other nonresidential uses. 1955 U. S. Code Cong. & Adm. News, p. 2905.

The Senate report (SR 404) amplified on this:

> This provision for assistance to redevelopment for nonresidential uses or industrial uses will be used for such areas as are found in many communities adjacent to railroads or other industrial property. Under the present law, land which is not predominantly residential in character cannot (except in certain limited cases) be developed for industrial or other nonresidential use. 1955 U. S. Code Cong. & Adm. News, p. 2922.

Thus, the Housing Act was extended a step further into the nonresidential area.

The next amendment of § 1460 took place in 1956, Aug. 7, 1956, C. 1029, Title III, § 302(a)(2), (b), (c), (d), 70 Stat. 1097. This amendment, generally speaking, consolidated the previously enacted provisions relating to slum clearance redevelopment with those relating to rehabilitation and conservation. As amended, § 1460 read:

> Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not clearly predominantly residential in character unless such area will be a predominantly residential area under the urban renewal plan therefor; *Provided*, That, where such an area which is not clearly predominantly residential in character contains a substantial number of slum, blighted, deteriorated, or deteriorating dwellings or other living accommodations, the elimination of which would tend to promote the public health, safety, and welfare in the locality involved and such area is not appropriate for predominantly residential uses, the Administrator

> may extend financial assistance for such a project, but the aggregate of the capital grants made pursuant to this subchapter with respect to such projects shall not exceed 10 per centum of the total amount of capital grants authorized by this subchapter.
>
> In addition to all other powers hereunder vested, where land within the purview of clause (1)(ii) or (1)(iii) of the first paragraph of this subsection (whether it be predominantly residential or nonresidential in character) is to be redeveloped for predominantly nonresidential uses, loans and advances under this subchapter may be extended therefor if the governing body of the local public agency determines that such redevelopment for predominantly nonresidential uses is necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives and to afford maximum opportunity for the redevelopment of the project area by private enterprise. * * *

Having taken these two steps toward expanding the Housing Act into redevelopment of nonresidential areas, Congress took a large stride forward in 1959. In that year § 1460 was once again amended, Sept. 23, 1959, Pub. L. 86-372, Title IV, § 413, 73 Stat. 675, 677, whereby virtually the entire language heretofore quoted was eliminated, and the following substituted:

> Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses; *Provided*, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial

assistance under this subchapter for such a project; *Provided further*, That the aggregate amount of capital grants contracted to be made pursuant to this subchapter with respect to such projects after September 23, 1959, shall not exceed 20 per centum of the aggregate amount of grants authorized by this subchapter to be contracted for after such date.

Plaintiff's complaint does not recite that portion of 42 U. S. C. § 1460 beginning with the phrase, "*Provided*, That if the governing body." There is no allegation in the complaint that the City of Cleveland has not made an appropriate determination that redevelopment of the Erieview area is necessary for the proper development of the community. A review of plaintiff's reply brief indicates that the City did make such a determination by ordinance adopted December 12, 1960.

Section 1460 underwent its latest amendment in 1961, at which time the percentage limitation for nonresidential areas was raised from 20% to 30%. June 30, 1961, Pub. L. 87-70, Title III § 308, 75 Stat. 166, 168, 172.

The committee commentary to this last amendment is most illuminating. It reads:

> Section 309 would permit 30 percent instead of 20 percent of urban renewal grant authority to be used for the renewal of areas not filling the predominantly residential requirement of the law.
>
> Urban renewal project areas presently are required to be "predominantly residential" in character either before or after renewal, except that 20 percent of available urban renewal grant funds may be devoted to projects without regard to this requirement. In addition, exceptions to the requirement are provided for disaster areas and for certain projects in the vicinity of colleges or universities. Another exception is to be found in the recently enacted Area Redevelopment Act (Public Law 87-27), to stimulate in-

dustrial and commercial development in depressed areas.

Originally, the Housing Act of 1949 made no provision for such exceptions, as urban renewal was regarded almost solely as a tool for the removal of slums and the provision of good residential neighborhoods. Over the years, however, it became clear that the construction of good neighborhoods was intimately related to the economic health of the community. The revitalization of industrial, commercial and downtown areas so as to attract job-creating private investment was realized as a necessary goal to which urban renewal could make a substantial contribution. Consequently, a 10 percent exception to the "predominantly residential" requirement was put into the Housing Act of 1954, and this was raised to 20 percent in the Housing Act of 1959. Under existing law this amounts to $313.6 million. Practically all of this has been committed at this time.

With growing attention to the needs for downtown renewal, it appears necessary to increase the exception to provide for a greater number of projects of this type. The economic, institutional, and cultural bases of community life are increasingly recognized as necessary to the creation and continuing existence of good homes in sound urban neighborhoods. 1961 U. S. Code Cong. & Adm. News, p. 1952.

An interesting commentary on this question of nonresidential redevelopment is found in the committee report on the Area Redevelopment Act:

> While the primary purpose of the urban renewal program is the elimination of residential slums, there is a growing recognition of the importance of nonresidential slum clearance projects. Sound city planning often requires that rundown business districts be rehabilitated or cleared and redeveloped, if the city is to fulfill its proper functions. Such redevelopment provides new opportunities for employment and business

> expansion. Moreover, experience has shown that public revenues can be increased manyfold by eliminating blight and returning land to its highest and best use. By so increasing tax revenues, such projects enable the local government to meet its many other responsibilities toward its citizens. 1961 U. S. Code Cong. & Adm. News, p. 1581.

There is a very clear picture here of the development of the law regulating availability of federal funds for redevelopment of nonresidential areas. The Housing Act of 1949 did, in fact, prohibit such grants. Five years later a restricted right to make such loans was established. Again, after a five-year lapse, the percentage of funds so available was doubled and the standards for redevelopment of nonresidential areas were substantially revised towards the ends of liberality. Within the past year § 1460 was again amended, so that presently almost one-third urban renewal funds may now be allocated to nonresidential areas. With this last amendment came a clear declaration of congressional policy and intent that the act was meant to provide for financial assistance in the redevelopment of downtown nonresidential areas, such as Erieview. In fact, it is said in the City of Cleveland's reply brief, practically every large city in the country has obtained, or is in the process of obtaining, urban renewal loans to redevelop nonresidential areas, under the provisions of the Act.

It is the opinion of the Court that the statutory provisions relied on by plaintiff, contrary to his contention, do provide for financial assistance by the federal government for the redevelopment of downtown nonresidential areas, such as Erieview. The plaintiff has recited only a part of a statutory provision out of the context of the whole, which leads to his misinterpretation of the act. The

plaintiff is not sustained in his contention that the City of Cleveland, by entering into agreements for financial assistance with reference to Erieview with the Public Housing Administration, has created an illegal debt.

It is the finding of this Court that the plaintiff's complaint does not state a cause of action under the federal statute recited therein; that the plaintiff is not entitled to the relief requested; that the defendants' motions to dismiss the complaint should be, and are hereby, granted.

The Court having granted the order of dismissal on the basis that the complaint failed to state a claim upon which relief might be granted, does not deem it necessary to rule on the questions of jurisdiction raised by the defendants.

APPENDIX B.

Opinion of the United States Court of Appeals for the Sixth Circuit.

Decided December 19, 1962.

Before: O'SULLIVAN and SMITH (U. S. Circuit Judge, Second Circuit, sitting by designation) and BOYD, District Judge.

SMITH, Circuit Judge. The City of Cleveland is proceeding with federal assistance to redevelop through its "Erieview" project a commercial area for commercial uses. The Cleveland City Charter permits a taxpayer to institute proceedings to restrain "the misapplication of funds of the City, or abuse of its corporate powers, or execution or performance of any contract made in behalf of the City in contravention of law" after demand to institute such a suit has been made on the City Director of Law and he has refused. See Cleveland City Charter, Sections 87, 90. Plaintiff-appellant, as a taxpayer, brings such an action in federal court, alleging that the City has entered into an illegal contract with the United States for loan to the City of funds for urban renewal unauthorized by statute and a second illegal contract with the Erieview Corporation for sale to it of lands for redevelopment under the first contract. Federal question jurisdiction is claimed to exist under 28 U. S. C. 1331. Plaintiff's motion pursuant to 28 U. S. C. 1653 to amend his complaint to allege the jurisdictional amount more fully is granted. Since under local law he sues in the right of the municipality, the amended allegation of financial loss to it appears to be sufficient. It may also be assumed that plaintiff presents a case or controversy suitable for determination in federal court. *Cf. Everson v. Board of Education*, 330 U. S. 1 (1947); *Doremus v. Board of Educa* [illegible] U. S. 429, 343-35 (1952).

The land which the Erieview Corporation is to redevelop is part of a Cleveland project known as "Erieview" which is aimed at redeveloping a predominantly commercial area for commercial uses. This is the same project unsuccessfully attacked in *Grisanti v. City of Cleveland*, 179 N. E. 2d 798 (Ohio C. P. 1961), *aff'd* 181 N. E. 2d 299 (Ohio Ct. App. 1962), *appeal dismissed*, 173 Ohio State. 386, 182 N. E. 2d 568 (1962), *appeal dismissed for want of a substantial federal question*, 31 U. S. L. W. 3154 (U. S. Sup. Ct. November 6, 1962). The statute which the apellant here claims to have been violated by the federal grant of funds is 73 Stat. 675 (1959), as amended, 42 U. S. C. 1460 (c) which provides as here relevant:

> "Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: *Provided*, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this subchapter for such a project: *Provided further*, That the aggregate amount of capital grants contracted to be made pursuant to this subchapter with respect to such projects after September 23, 1959, shall not exceed 20 per centum of the aggregate amount of grants authorized by this subchapter to be contracted for after such date."

The District Court for the Northern District of Ohio, Ben C. Green, J., granted a motion to dismiss the complaint for failure to state a claim on which relief could be granted filed by the defendant City of Cleveland in which the other defendants joined, and plaintiff appeals. The Court did not pass on other questions of jurisdiction and

governmental immunity in view of the dismissal. We affirm the judgment dismissing the action.

The District Court concluded from a reading of the statute and the relevant legislative history that a contract such as the one between the City and the United States was authorized by the statute, and that the plaintiff had therefore made no showing of illegality. This contract being proper, the subsidiary contract between the City and Erieview Corporation was also found to be legal.

Appellant's efforts to reword the statute so as to prohibit the contracts in suit are unavailing. The meaning of the statute is quite plain as it is written, even without the strong reinforcement found in the legislative history referred to in Judge Green's memorandum below. The provision in terms authorizes redevelopment of "such an area." This plainly refers to "any urban renewal area which is not predominantly residential * * * and which * * * is not to be redeveloped for predominantly residential uses * * *." Appellant argues that the statute should be restated in positive terms by eliminating the "nots." This may be an interesting exercise in semantics, but quite plainly alters the meaning of the language as used, which is that a limited portion (at that time 20%) of the funds only was to be available for redevelopment of areas neither predominantly residential in origin nor in ultimate use. No claim has been advanced that the requisite determination has not been made by the governing body of the local public agency or that the aggregate amount of capital grants contracted to be made under the proviso in question exceeds 20 per centum of the aggregate amount under the subchapter. Appellant's contentions on interpretation of the statutory provisions border on the frivolous.

Judgment affirmed."

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 772

HARRY A. BLACHMAN, PETITIONER

v.

ERIEVIEW CORPORATION, ET AL.

BRIEF IN OPPOSITION FOR THE HOUSING AND HOME FINANCE AGENCY, PUBLIC HOUSING ADMINISTRATION, ROBERT C. WEAVER, ADMINISTRATOR, AND THE UNITED STATES OF AMERICA

OPINIONS BELOW

The opinion of the district court (R. 6a–16a) is unreported. The opinion of the court of appeals (Pet. App. 12–14) is as yet unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 19, 1962. The petition for a writ of certiorari was filed on January 23, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Section 110(c) of the Housing Act of 1949 prohibits the expenditure of federal funds for a non-residential urban renewal project in a non-residential area.

STATUTE INVOLVED

Section 110(c) of the Housing Act of 1949, 63 Stat. 413, 420, as amended, 73 Stat. 675, 42 U.S.C. 1460(c) provides in pertinent part:

* * * * * *

> Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: *Provided*, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this subchapter for such a project: * * *

* * * * * *

STATEMENT

This action was brought by petitioner, a taxpayer of the City of Cleveland, Ohio, to enjoin an allegedly illegal use of federal funds for an urban renewal project in a commercial section of that city, and to compel the City to cancel its agreement with respondent Erieview Corporation ("Erieview") for the development by the latter of certain land in the project area. The theory of the complaint (R. 3a–6a) was that the applicable federal urban renewal statute (Section 110(c) of the Housing Act of 1949, 42 U.S.C. 1460(c)) bars the expenditure of federal funds for an urban renewal project in a non-residential area. The district court dismissed the complaint on the ground

that the statute expressly permits the use of federal funds for such a project, and the court of appeals unanimously affirmed.

The amended complaint (R. 3a–6a) alleged the following facts:

On March 3, 1961, the City of Cleveland, Ohio entered into an agreement with the United States under which the United States agreed to lend the City $33,875,784, to make a capital grant of $9,898,784, and to make relocation payments of $805,000 for the development of Erieview I Project, on a designated area of about 95 acres in Cleveland (R. 4a).

On November 9, 1961, the City entered into a contract with Erieview under which the City sold to Erieview certain land in the project area, and Erieview agreed to redevelop the land according to the plans agreed on by the United States and the City (R. 4a).

The entire Erieview project area is a predominantly commercial or industrial area and is not a blighted predominantly residential area (R. 5a).

The district court rejected petitioner's contention that because the project area is not residential, the use of funds is prohibited by section 110(c). The court stated:

> * * * the statutory provisions relied on by plaintiff, contrary to his contention, do provide for financial assistance by the federal government for the redevelopment of downtown nonresidential areas such as Erieview. The plaintiff has recited only a part of a statutory provision out of the context of the whole, which

leads to his misinterpretation of the Act. [R. 15a–16a.]

The court of appeals affirmed. It held that:

> * * * The meaning of the statute is quite plain as it is written * * *. The provision in terms authorizes redevelopment of "such an area." This plainly refers to "any urban renewal area which is not predominantly residential * * * and which * * * is not to be redeveloped for predominantly residential uses. * * *" Appellant's contentions on interpretation of the statutory provisions border on the frivolous. [Pet. App. 14.]

ARGUMENT

Petitioner contends that Section 110(c) of the Housing Act of 1949 bars the expenditure of federal funds for an urban renewal project in a non-residential area. This argument, as both courts below correctly held, is directly contradicted by the plain language and the legislative history of the statute.

Section 110(c) provides:

> Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: *Provided,* That, if the governing body of the local public agency determines that the redevelopment of *such an area* for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this subchapter for such a project: * * *. [Emphasis added.]

Petitioner contends (Pet. 7) that the proviso permits non-residential development only in "predominantly residential areas," *i.e.*, he reads the words "such an area" in the proviso as referring only to the words "not to be redeveloped for predominantly residential uses" in the prior part of the Section. As the court of appeals pointed out (Pet. App. 14), however, the reference in the proviso to "such an area" "plainly refers to 'any urban renewal area which is not predominantly residential * * * *and* which * * * is not to be redeveloped for predominantly residential uses.'" In other words, while the Section, in general, bars federal assistance for redevelopment of a non-residential area for non-residential purposes, the proviso permits "such an area" to be redeveloped for nonresidential use if the governing local body determines that such use is necessary for the proper development of the community.[1]

This interpretation of the statute is supported by its legislative history. The Senate Committee Report on the bill pointed out that Section 110(c) would "permit up to 20 percent of the future capital grant authorization to be used for areas which are not predominantly residential, and which are not to be redeveloped for predominantly residential uses, even if such areas do not include a substantial number of slum dwellings as presently required" (S. Rep. No. 924, 86th Cong., 1st Sess., p. 21). Congress thus intended, as the court below stated (Pet. App. 14), "that a limited portion (at that time 20%) of the funds only was to

[1] As noted in the opinion below (Pet. App. 14), "[n]o claim has been advanced" here that "the requisite determination has not been made by the [local] governing body".

be available for redevelopment of areas neither predominantly residential in origin nor in ultimate use."

Under petitioner's theory, the proviso is unnecessary. For since Section 110(c) bars federal assistance only if two conditions exist, *i.e.*, if the area is not residential and is not to be redeveloped residentially, it does not bar the use of federal funds to redevelop a residential area for non-residential purposes. Thus, the kind of urban renewal which, according to petitioner, the proviso is intended to authorize, is actually permitted by the statute without regard to the proviso.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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In the Supreme Court of the United States

No. 722.

OCTOBER TERM, 1962.

HARRY A. BLACHMAN,
As A Taxpayer,
Petitioner,

-against-

ERIEVIEW CORPORATION,
CITY OF CLEVELAND, OHIO,
HOUSING AND HOME FINANCE AGENCY,
ROBERT C. WEAVER, ADMINISTRATOR,
PUBLIC HOUSING ADMINISTRATION,
ROBERT C. WEAVER, ADMINISTRATOR,
UNITED STATES OF AMERICA,
Respondents.

REPLY BRIEF OF PETITIONER.

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ERIEVIEW CORPORATION,
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ROBERT C. WEAVER, ADMINISTRATOR,
PUBLIC HOUSING ADMINISTRATION,
ROBERT C. WEAVER, ADMINISTRATOR,
UNITED STATES OF AMERICA,

Respondents.

REPLY BRIEF OF PETITIONER.

The federal statute, 42 U. S. C. 1460 (c) *forbids* financial assistance to be extended with respect to any urban renewal area, which fails to comply with the two following conditions:

(1) That the area be predominantly residential, first and always, before or after renewal; and

(2) That the area be redeveloped for predominantly residential uses.

Only under certain circumstances is the second condition excused.

The respondents have fallen into error because of the second condition. The second condition is excused when the governing body determines that it is desirable *to redevelop or to renew nonresidentially*.

The first condition is never excused. The first requirement is the very heart and the motivating force which led to the enactment of the Housing Act of 1949. Its purpose was *"the goal of a decent home and suitable living environment for every American family."*

This purpose was reaffirmed when the Housing Act of 1961 was being framed and the committee declared:

> "After careful consideration of the problems which S. 1342 is designed to solve, the committee believes that this new program is required to achieve the national housing policy of "a decent home and suitable living environment for every American family."
>
> *U. S. Code Congressional And Administrative News-87th Congress-1961,* page 2011.

If the purpose of this legislation has been subverted in other areas of the United States without challenge, it is high time that the *legislative authority of the Congress of the United States be reestablished.*

When this matter was before the District Court, the District Judge agreed that the statute in question, 42 U. S. C. 1460(c) begins by describing a *residential area.* The court's memorandum opinion contains the following:

> "As stated in the original memorandum, the plaintiff relied upon part of the statute which provides for the redevelopment of residential areas * * *."

Since the subject area is a *residential area*, this enactment *cannot be turned into a nonresidential area* by anything which follows in the proviso clause.

We pointed this out in our brief. The respondents made no answer to this.

We pointed out that counsel for the City of Cleveland in oral argument before the reviewing court below said:

"If there were a period at the end of the first part of the statute, Mr. Blachman would be right."

Again, the respondents made no answer.

We pointed out that 42 U. S. C. 1460(c) is the only statute which allocates funds for predominantly residential urban renewal areas.

The respondents made no reply to this.

The respondents would by one fell swoop destroy all authority for extending financial assistance for predominantly residential areas.

We pointed out that *Section 113(b)* of the *Area Redevelopment Act acknowledges* that 42 U. S. C. 1460(c) describes a project area which is *predominantly residential in character*. This is not the statement of your petitioner. *This is the statement of the Congress of the United States.*

Section 113(b) excuses the requirement *that the area be predominantly residential* or that it be required to be *redeveloped for predominantly residential* uses in order to qualify for financial assistance under the *Area Redevelopment Act*.

Nonresidential areas may qualify for funds under the *Area Redevelopment Act, if* such areas are declared by the *Secretary of Commerce* to be *depressed areas where 6 per cent unemployment persists*.

The Erieview Area of Cleveland is not such a depressed area and was never declared to be a depressed area and is not entitled to federal financial assistance under the Area Redevelopment Act.

It is obvious that any committee reference, cited by the respondents, which is interpreted to indicate that the Area Redevelopment Act gives support to the respondents' contention, is totally without foundation. All we need to

do is to examine the following portion of *Section 113(b) of the Area Redevelopment Act*:

> "Sec. 113(b) Subject to the provisions of subsection (e) of this section, the Administrator may provide such financial assistance *without regard to the existing requirement that the project area be predominantly residential in character or be redeveloped for predominantly residential uses under the urban renewal plan* * * *."

The committee references cited by the respondents do not support the respondents' contention.

The confusion on the part of the respondents relates to the second requirement of 42 U. S. C. 1460(c), which relates to *redevelopment*.

At different times 10 per cent, then 20 per cent, and now 30 per cent of urban renewal funds may be used for *nonresidential redevelopment* under certain conditions.

But at all times this *nonresidential redevelopment* can only receive federal financial assistance in a *predominantly residential area*.

The District Judge well pointed out (p. 18 of City of Cleveland's brief) that:

> "The 1949 act made no provision for allocation of federal funds for redevelopment of nonresidential areas."

The 1954 Housing Act concerns itself only with an area which is

1. clearly residential, or
2. substantially residential, or
3 has a substantial number of blighted living accommodations.

The 1956 Housing Act and the 1959 Housing Act and the 1961 Housing Act each have the same concern and purpose and language in respect to the subject or project area:

"That financial assistance shall not be extended for any project involving slum clearance and redevelopment of an area which is not clearly predominantly residential *et seq.*". (1954 Housing Act)

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not clearly predominantly residential in character *et seq.*" (1956 Housing Act)

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not predominantly residential in character *et seq.*" (1959 Housing Act)

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not predominantly residential in character *et seq.*" (1961 Housing Act).

The 1956 and the 1959 Housing Acts appear more fully on page 10, Appendix, *infra*.

The committee report upon which the respondents rely totally ignores the following statement:

"Urban renewal projects presently are *required to be predominantly residential in character either before or after renewal*, except that 20 per cent of available urban renewal grant funds may be devoted to projects without regard to this requirement."

The *requirement* relates, of course, to the *redevelopment requirement*, which is the *second condition* of qualifying for urban renewal funds; otherwise, how would one explain the above statement that "*Urban renewal projects presently are required to be predominantly residential in character either before or after renewal*"?

The Congress of the United States understood this and recognized this; otherwise, the language of Section 113(b) of the Area Redevelopment Act would not have recited:

"* * * without regard to the requirement or limitations of Section 110 (c) that the project area be predominantly residential in character or be redeveloped for predominantly residential uses * * *."

Even if there were any confusion, it would be dispelled by the declaration of the Congress itself. No comment of any committee or declaration has any greater finality than that of the superior body, the law making body of the United States Government.

Statutes which are in *pari materia* are to be read and construed together. See 82 *Corpus Juris Secundum* 366. Also see *Board of Commissioners, etc. v. Bernardin*, 74 Fed. 2d 809, 814 (1914):

"* * * A construction of a statute by the Legislature, as indicated by a subsequent enactment, is entitled to consideration as an aid in interpreting such statute. Bailey v. Clark, 21 Wall 284, 22 L. Ed. 651; First Nat. Bank in St. Louis v. State of Missouri, 263 U. S. 640, 68 L. Ed. 486; Tiger v. Western Investment Co., 221 U. S. 286, 309, 59 L. Ed. 378, certification denied 295 U. S. 731, 79 L. Ed. 738."

The respondent City of Cleveland on pages 10 and 11 of its brief has quoted from the Section by Section Analysis of the Area Redevelopment Act regarding Section 113 (b). Such analysis, of course, completely supports the position of the petitioner.

In addition there appears on *page 1569 of said 1961 U. S. Code Congressional And Administrative News* the following:

"*Sixth*: The bill contains 2 sections which would vest additional authority in the HHFA Administrator in order to assist redevelopment areas.

Grants and loans for urban renewal could be made without regard to the "predominantly residential" requirement which must be met in most cases * * *."

Another reference in our brief which the respondents failed to explain is that of the *Urban Renewal Manual of the Housing And Home Finance Agency under date of 5/24/62*:

> "An area redevelopment *exception* is excepted *from the requirement of Section 110 (c) of Title I that the project area must be predominantly residential in character or must be redeveloped for predominantly residential uses.*"

The City of Cleveland made mention of the *Grisanti* case. Such mention is totally irrelevant as the respondent abandoned its claim of res judicata in the reviewing court below.

That other cities may have illegally received federal financial assistance in nonresidential areas, without being challenged, adds no weight to the respondent's argument and is likewise irrelevant.

Another irrelevancy interjected is the City's financing problems.

The City, in its own interest, should have joined with the petitioner in asking that the petition for a writ of certiorari be granted, so that this statute which has never been construed, may forever be free from doubt.

When the brief of the Federal Government contends on page 6 of its brief that the Proviso would be unnecessary under the petitioner's theory, we shall point out the error of such statement by the following example.

Were it not for the Proviso, the predominantly residential "Gladstone" Area of Cleveland would have to be *redeveloped residentially*, for there are two requirements, as we have previously pointed out, before an area can qualify for federal financial assistance. No one is challeng-

ing the right to redevelop nonresidentially in the "Gladstone" Area, nor could they by reason of the Proviso.

Furthermore, it would be absurd to hold that Congress intended to create an exception, within the meaning of this statute, that would permit commercial redevelopment in a commercial area.

The Proviso is needed to permit nonresidential redevelopment in a predominantly residential area.

Finally, the following facts have not been controverted:

1. That the Housing Act of 1949 from its inception, and as amended, has as its prime concern "the goal of a decent home and suitable living environment for every American family."
2. That no legislation except the Area Redevelopment Act authorizes federal financial assistance in nonresidential areas and that the Area Redevelopment Act does not apply here.
3. That the Area Redevelopment Act acknowledges the predominantly residential requirement of 42 U. S. C. 1460 (c); and
4. That the Urban Renewal Manual of the Housing and Home Finance Agency acknowledges the predominantly residential requirement of 42 U. S. C. 1460 (c).

CONCLUSION.

The Court below "has decided an important question of law which has not been, but should be, settled by this Court."

Pursuant to Rules of the Supreme Court of the United States, Part V, Rule 19 (b) we ask that the petition for a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX.

Housing Act of 1956, Public Law 1020-84th Congress Chapter 1029-2nd Sess., H R 11742, August 7, 1956. Sec. 302(b).

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not clearly predominantly residential in character unless such area will be a predominantly residential area under the urban renewal plan therefor:

Provided, That where such an area which is not clearly predominantly residential in character contains a substantial number of slum, blighted, deteriorated, or deteriorating dwellings or other living accommodations, the elimination of which would tend to promote the public health, safety, and welfare in the locality involved and such area is not appropriate for predominantly residential uses, the Administrator may extend financial assistance for such a project, but the aggregate of the capital grants made pursuant to this title with respect to such projects shall not exceed 10 per centum of the total amount of capital grants authorized by this title."

Housing Act of 1959, Public Law 86-372, 86th Congress, S.2654, Sec. 413, September 23, 1959.

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor; is not to be redeveloped for predominantly residential uses:

Provided, That if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this title for such a project: Provided further, That the aggregate amount of capital grants contracted to be made pursuant to this title with respect to such projects after the date of the enactment of this Housing Act of 1959 shall not exceed 20 per centum of the aggregate amount of grants authorized by this title to be contracted for after such date."